

No. 18-1451

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

MYNOR ABDIEL TUN-COS; JOSÉ PAJARITO SAPUT; LUIS VELASQUEZ
PERDOMO; EDER AGUILAR ARITAS; EDUARDO MONTANO
FERNÁNDEZ; PEDRO VELASQUEZ PERDOMO; JOSÉ CÁRCAMO;
NELSON CALLEJAS PEÑA; GERMÁN VELASQUEZ PERDOMO,

Plaintiffs–Appellees,

v.

B. PERROTTE, ICE Agent; T. OSBORNE, ICE Agent; D. HUN YIM, ICE Agent;
P. MANNEH, ICE Agent; A. NICHOLS, ICE Agent,

Defendants–Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF VIRGINIA

**MOTION OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION,
AMERICAN CIVIL LIBERTIES UNION OF VIRGINIA, CATO
INSTITUTE, AND THE RUTHERFORD INSTITUTE FOR LEAVE TO
FILE BRIEF IN SUPPORT OF PLAINTIFFS–APPELLEES’ PETITION
FOR REHEARING EN BANC**

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I. INTRODUCTION

Pursuant to Federal Rules of Appellate Procedure 29(a)(3) and (b), proposed amici curiae American National Civil Liberties Union, American National Civil Liberties Union of Virginia, Cato Institute, and the Rutherford Institute respectfully move the Court for leave to file the attached amici curiae brief in support of Plaintiffs-Appellees' petition for rehearing en banc.

II. CONSENT OF THE PARTIES

Plaintiffs-Appellees and Defendants-Appellants, through their counsel, consent to this motion.

III. STATEMENT OF AMICI CURIAE

The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization with nearly 2 million members and supporters dedicated to the principles of liberty and equality embodied in the U.S. Constitution. The ACLU of Virginia is a state affiliate of the ACLU. Government accountability and the protection of individual liberty against unwarranted government intrusion are issues of special concern to the ACLU and its affiliates, which have been at the forefront of state and federal cases addressing individual rights and liberties since the ACLU was founded in 1920.

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty,

free markets, and limited government. Cato's Project on Criminal Justice was founded in 1999, and focuses on the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement. Toward these ends, Cato publishes books and studies, conducts conferences, issues the annual Cato Supreme Court Review, and files amicus curiae briefs with courts across the nation.

The Rutherford Institute is an international civil liberties organization headquartered in Charlottesville, Virginia. Founded in 1982 by its President, John W. Whitehead, the Institute specializes in providing legal representation without charge to individuals whose civil liberties are threatened and in educating the public about constitutional and human rights issues. Attorneys affiliated with the Institute have represented parties and filed numerous amicus curiae briefs in the federal Courts of Appeals and Supreme Court. The Institute works to protect citizens against the abuse of authority by the government and its agents and to ensure that the courts are open to citizens to obtain redress for such abuse.

IV. MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF

The panel decision which is the subject of the petition for rehearing ruled that there is no remedy under *Bivens v. Six Unknown Named Agents of Federal*

Bureau of Narcotics, 403 U.S. 388 (1971), in an action against Immigration and Customs Enforcement (“ICE”) agents for unreasonable searches and seizures. This ruling is in conflict with Supreme Court precedent and in significant tension with decisions of other United States Courts of Appeals that have addressed the availability of *Bivens* relief in search and seizure actions against federal law enforcement officers. Moreover, the panel’s ruling is likely to have a significant future impact on *Bivens* litigation, with far-reaching consequences for the scope of its availability.

Proposed amici have filed dozens of trial court and appellate briefs on *Bivens* issues, both as counsel for plaintiffs and as amici. They have extensive experience analyzing, briefing, and litigating such issues, and they expect to continue addressing similar issues in numerous additional cases in the future. Proposed amici, therefore, have a strong interest in advocating for the fair and rational development of the law in this area and submit that their positions on the issues raised in the petition will be helpful to the Court in evaluating Plaintiffs-Appellees’ petition for rehearing en banc.

V. CONCLUSION

For the foregoing reasons, proposed amici curiae respectfully request that the Court grant this motion and permit the filing of the amici curiae brief attached to this motion.

Dated: July 1, 2019

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limits of Federal Rules of Appellate Procedure 27(d)(2)(A) because it contains 621 words.

Dated: July 1, 2019

s/ Jonathan Hafetz

Jonathan Hafetz

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2019, I electronically filed the foregoing motion with the Clerk of the Court of the United States Court of Appeals for the Fourth Circuit using the CM/ECF system. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system.

Dated: July 1, 2019

s/ Jonathan Hafetz

Jonathan Hafetz